

Section 9

Removing Juror Bias by Applying Psychology to Challenges for Cause

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I. INTRODUCTION

Recent attention has been focused on the use of peremptory challenges in both civil and criminal litigation.¹ Much of this attention was triggered by Batson and a concern that the use of potentially discriminatory peremptory challenges could influence the composition of, and thus the fairness of, seated juries.² Interest in the impact of peremptory challenges on the impartiality of juries has also been heightened by increasing concern about the role of jury consultants,³ and the possibility that these consultants can assist trial counsel by actually creating biased juries.⁴

While this attention has primarily been focused on the use of peremptory challenges during the voir dire process of jury selection, we believe that this attention is misplaced in any effort to ensure that the jury selection process results in truly fair and impartial juries.⁵ Rather, it is through the proper and effective use of challenges for cause that juries can be seated that do not contain biased members.

That it is crucial to justice, and also to the appearance of justice, to take extensive steps to ensure fair juries appears to be obvious. However, the importance of each

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¹ Jeffrey J. Rachlinski, *Scientific Jury Selection And The Equal Protection Rights of Venire Persons*, PACIFIC LAW JOURNAL (April, 1993).

² *Batson v. Kentucky*, 476 U.S. 79 (1986).

³ Stephen J. Adler, *The Jury: Trial and Error in the American Courtroom*, Random House (1994).

⁴ Jeffrey J. Rachlinski, *supra*.

⁵ It is interesting to note that neither Adler, nor Rachlinski (nor any other authors) have, despite extensive discussions of the role of jury consultants, demonstrated that such consultants have any real impact on the fairness of impaneled juries. The reason for this is that the value of jury consultants for jury selection is to aid in identifying potentially biased jurors, and to assist in implementing the “deselection” procedure which actually occurs in jury selection to remove unfair jurors.

member of a jury being impartial is highlighted by the psychological research that demonstrates that when groups, such as juries, are used to make judgments, their level of performance does not rise to some higher level.⁶ But rather, on difficult tasks, where the solutions are not easily discernible, groups typically perform at the level of their average members.⁷ Thus the seating of a potentially biased juror raises grave implications for the fairness of a jury trial.

Psychologists have long studied how information-processing and decision-making are influenced by cognitive processes.⁸ Strong research support for the concept that bias will result from a juror's preexisting attitude exists in the literature of social psychology. For example, Ross, et al., studied social perception and found that people persevere in their initial attitudes, even in the face of contradictory evidence.⁹

Lord, and his associates studied the effects of prior theories on subsequently considered evidence, and found that people who enter a situation with a prior attitude will interpret new information so as to strengthen that attitude. It is important to note that even contradictory information will be interpreted to support one's prior attitude.¹⁰ Similarly, Ditto and Lopez found that information consistent with a preferred conclusion is examined less critically than is information inconsistent with a preferred conclusion.¹¹ Consequently, less information is needed to reach a preferred conclusion.¹²

Extensive evidence that pre-trial attitudes will impact jurors' verdicts can be found in the research on the impact of pre-trial publicity. For example, Carroll, et al., have reviewed actual cases and experimental studies and consistently found an effect of

⁶ Daniel Gigone and Reid Hastie, *Proper Analysis of the Accuracy of Group Judgments*, PSYCHOLOGICAL BULLETIN, Vol. 121 (1997).

⁷ Laughlin, VanderStoep & Hollingshead, *Collective Versus Individual Induction: Recognition of Truth, Rejection of Error, and Collective Information Processing*, JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, Vol. 61 (1991).

⁸ See Alice H. Eagly and Shelly Chaiken, *The Psychology of Attitudes*, Harcourt Brace Jovanovich College Publishers (1993).

⁹ Ross, Lepper & Hubbard, *Perseverance in Self-Perception and Social Perception: Biased Attributional Processes in the Debriefing Paradigm*, JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, Vol. 32 (1975).

¹⁰ Lord, Ross & Lepper, *Biased Assimilation and Attitude Polarization: The Effects of Prior Theories on Subsequently Considered Evidence*, JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, Vol. 37 (1979).

¹¹ Ditto & Lopez, *Motivated Skepticism: Use of Differential Decision Criteria for Preferred and Nonpreferred Conclusions*, JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, Vol. 63 (1982).

¹² Id.

publicity on jurors' verdicts.¹³ This phenomenon has been long recognized¹⁴ and studied in both actual trials and laboratory research.¹⁵

That attitudes affect behavior is not surprising.¹⁶ What is surprising is the relative lack of effort by judges and trial counsel to use challenges for cause to remove prospective jurors holding potentially biasing attitudes from jury panels. While attention is focused on peremptory challenges, which are limited in some cases to as few as three per party¹⁷, jurors holding prejudicial attitudes are allowed to remain in the array, and eventually be seated if the number of peremptory challenges is not sufficient to remove all of the biased jurors.

Such jurors remain eligible to sit on the impaneled jury by simply stating to the court that, despite having expressed prejudicial attitudes, or having had experiences highly likely to give rise to such attitudes, that they can be fair and impartial.¹⁸ That people holding potentially prejudicial attitudes are regularly seated as jurors in civil and criminal trials is readily observable. For example, the authors have recently observed jury selections where the following jurors were not removed for cause:

- ◆ a personal injury suit where the juror was currently a plaintiff in a class action medical device product liability suit;
- ◆ a race discrimination suit where the juror had been a plaintiff in a discrimination suit based on religious preference;

¹³ Carroll, et al., *Free Press and Fair Trial: The Role of Behavioral Research*, LAW AND HUMAN BEHAVIOR, Vol. 10 (1986).

¹⁴ See, e.g., Kline and Jess, *Prejudicial Publicity: Its Effect on Law School Mock Juries*. JOURNALISM QUARTERLY, Vol. 43 (1966); Hoiberg and Stires, *The Effect of Several Types of Pretrial Publicity on the Guilt Attributions of Simulated Jurors*, JOURNAL OF APPLIED SOCIAL PSYCHOLOGY, Vol. 3 (1973); and Greene and Loftus, *What's New in the News? The Influence of Well-Published News Events on Psychological Research and Courtroom Trials*, BASIC AND APPLIED SOCIAL PSYCHOLOGY, Vol. 5 (1984).

¹⁵ Kramer and Kerr, *Laboratory Simulation and Bias in the Study of Juror Behavior*, LAW AND HUMAN BEHAVIOR, Vol. 13 (1989).

¹⁶ See, Ajzen and Fishbein, *Understanding Attitudes and Predicting Social Behavior*, Prentice-Hall (1980); and Fazio and Zanna, *Direct Experience and Attitude-Behavior Consistency*, ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY, Academic Press, Vol. 14 (1981).

¹⁷ Federal Civil Judicial Procedures & Rules, 28.

¹⁸ See, e.g., *Swap Shop v. Fortune* 365 S.W. 2d 151 (Texas 1963) in which a juror, once the trial had begun, notified the court that he had just realized that the defendant was the father-in-law of his close friend. The juror acknowledged a bias, yet was able to tell the court that this connection would not affect his ability to render a fair verdict and therefore continued to serve.

- ◆ a premises liability suit involving a violent crime where the juror had once been the victim of a violent crime;
- ◆ a criminal case involving a woman battered by her husband where the juror provided counseling to abused women;
- ◆ a premises liability case involving rape where the juror stated she was inclined to make a large damages award because she was very upset by rape; etc.

All of the above jurors were able to be seated because they were able to say to the court that they could be fair and impartial jurors in the matter at trial. While such a statement clearly meets standard legal burdens of fairness and ability to serve as a juror, the statement fails psychological burdens of credibility.¹⁹ It is of note that such a statement would generally not be considered adequate to rehabilitate a judge or lawyer who had a conflict involving the matter at hand. We would clearly not accept an officer of the court, who indicated a conflict, or a strong appearance of a conflict, remaining a significant participant in the litigation simply because of a statement that he/she could "...set the conflict aside and be fair and impartial."

Yet jurors, who are the least legally experienced and trained participants in the trial process, are allowed to make such statements. With the exception of pecuniary interests and some degree of consanguinity to a party, judges regularly allow jurors with the potential for bias to be seated. The law fails to protect the parties to the litigation from this bias because the basic psychology underlying juror bias is not understood by court and counsel. Attorneys and judges with an understanding of the psychology of challenges for cause will be better equipped to ensure the selection of an unbiased jury.

II. THE PSYCHOLOGY OF CHALLENGES FOR CAUSE

Thorough voir dire, covering details of the case and jurors' related attitudes and experiences, is an important tool for uncovering bias. However, biased jurors will still be seated if they can be rehabilitated simply by stating that they can be fair and impartial. Below are presented a number of factors that impact the court and counsel's ability to seat a fair and impartial jury by relying on traditional voir dire²⁰ and peremptory challenges. From these factors it will be apparent that prospective jurors' statements, that they can be fair and impartial, must be carefully evaluated in light of their personal experiences and attitudes relevant to the case at trial.

¹⁹ Whether the prospective juror states that he/she can be fair and impartial because the juror truly believes this to be true, or because the juror is responding to pressure from the judge or counsel, is irrelevant. Such statements are, for all but exceptional jurors, contradicted by the psychological research evidence.

²⁰ See, Krauss and Bonora, *Jurywork*, Clark Boardman Callaghan (1996) for a discussion of the voir dire process from both the legal perspective (statutes and case law) and the consultant's objectives.

A. LACK OF KNOWLEDGE OF OWN BIASES

Psychologists have long known that people often do not know what affects their behavior, and are largely out of touch with their own cognitive states.²¹ In a review of the research literature on human inference and shortcomings in social judgment, Nisbett and Ross found that judgments are often biased by attitudes.²²

Given that people are often unaware of the cognitive factors affecting their biases, it would appear that jurors would be unqualified to render an opinion as to their own ability to be fair. After all, they are placed in a position where they are asked to perform a task with which they are generally inexperienced, by following rules they have not yet been given, while applying those rules to a set of facts yet unknown to them. The unique nature of jury service clearly argues that prospective jurors may not be accurate judges of their own ability to set aside experiences and attitudes in order to judge the facts of a case fairly and impartially.

We are familiar with numerous examples where jurors' lack of awareness of their own cognitive states rendered them biased, despite their affirmation of their ability to be fair and impartial. In one case, for example, involving a business dispute with a Japanese company as the defendant, a juror stated that he felt absolutely no bias toward the Japanese defendant. Counsel later learned that the juror would buy an American-made product rather than a Japanese product, even if the Japanese product was of higher quality and lower cost. The juror was simply unaware that he held attitudes about Japanese businesses that would impact his ability to be fair and impartial in the trial of this matter.

B. LIMITATIONS OF SELF-REPORT OF POTENTIALLY BIASING EXPERIENCES AND ATTITUDES

The dangers of relying on individuals' self-reports about their thoughts and behaviors is well known.²³ People often do not accurately remember matters on which they are being asked to report. They may not remember because they failed to store the event in memory, or they stored it and are now unable to retrieve it, or the memory has become distorted.²⁴ The memory may then resurface when stimulated by trial testimony

²¹ Nisbett and Wilson, *Telling More Than We Can Know: Verbal Reports on Mental Processes*, PSYCHOLOGICAL REVIEW, Vol. 84 (1977).

²² Nisbett and Ross, *Human Inference: Strategies and Shortcomings of Social Judgment*, Prentice-Hall (1980).

²³ See, American Psychological Association *Monitor*, Vol. 28, November 1, 1997, for a report on a National Institutes of Health, November, 1996 Conference, "The Science of Self-Report: Implications for Research and Practice."

²⁴ *Id.*

and/or the deliberation process.²⁵ People also do not like to admit that they engage in undesirable actions, or report on personal and sensitive issues such as drug use, spousal abuse or abortions.²⁶

By nature, the voir dire process relies entirely on self-reports by prospective jurors. The experiences and attitudes of jurors that might lead to bias are often personal and sensitive, involving such things as crime victimization, mental and physical health, prejudices regarding various races, religions, national origins, genders and sexual orientations, bankruptcy and other financial experiences, drug use, abortions, family tragedies, etc. It is naïve, at best, to accept jurors' representations that they can be fair and impartial in cases where their self-report of attitudes and experiences indicates a potential for bias.

C. SOCIAL DESIRABILITY RESPONSES

During voir dire prospective jurors do not want to answer questions in a manner which they perceive to be socially undesirable.²⁷ Crowne and Marlow have labeled this "social desirability," and have studied how people seek approval through giving socially desirable responses.²⁸ Many authors have noted that prospective jurors perceive admitting to bias to be socially undesirable.^{29,30}

If some jurors hold attitudes that are prejudicial to one of the parties, yet believe that they will be seen as socially undesirable if they admit to being prejudiced, it is likely that some subset of those prejudiced jurors will state that they can be fair and impartial in order to obtain approval from the judge, counsel, or other jurors. Obviously, seating such a juror will result in a biased jury.

D. SOCIAL PRESSURE TO CONFORM

²⁵ Gruder, Cook, Hennigan, Flay, Alessis and Halamaj, *Empirical Tests of the Absolute Sleeper Effect Predicted From the Discounting Cue Hypothesis*, JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, Vol. 36 (1978).

²⁶ Gruder et al., *supra*.

²⁷ Crowne and Marlowe, *The Approval Motive: Studies in Evaluative Dependence*, Wiley (1964).

²⁸ *Id.*

²⁹ Balch, Griffiths, Hall & Winfree, *The Socialization of Jurors: The Voir Dire as a Rite of Passage*, JOURNAL OF CRIMINAL JUSTICE, Vol. 4 (1976).

³⁰ Suggs and Sales, *Juror Self-Disclosure in the Voir Dire: A Social Science Analysis*, INDIANA LAW JOURNAL, Vol. 56 (1981).

Similar to social desirability, many prospective jurors will not want to appear to be deviant in any way from their fellow jurors, or what they believe to be the attitudes of their fellow jurors.³¹ Research has shown that conformity is motivated by emotional rewards and punishments.³² Conformity leads to feelings of pride, while non-conformity leads to feelings of shame.³³ Jurors will certainly want to avoid the “shame” of expressing bias, and therefore being deviant, when other jurors state that they can be fair and impartial. Pride can be obtained by denying bias, and conforming to the stereotypical role of the fair juror.

The pressure to conform is especially high when it is perceived as coming from high status individuals.³⁴ In the courtroom, the judge is perceived by jurors as a very high status person. If the judge conveys pressure to conform by declaring fairness and impartiality, it would be likely that many biased jurors would make such a declaration. It is common for judges to lecture prospective jurors on their duty to be fair and impartial, and their legal requirement to set aside any personal beliefs and follow the law as given to them by the judge.³⁵

E. LYING

While prospective jurors are under oath while answering questions during voir dire, there is ample evidence that some will lie. Marshall conducted a study, funded by the National Institute of Justice, of actual jurors from criminal trials, and found that almost one in five (18%) withheld information during questioning.³⁶ Broeder conducted an empirical study of voir dire in 23 trials.³⁷ He concluded that jurors often lie during voir dire, and noted that voir dire was not effective in revealing juror biases.

³¹ See Asch, *Opinions and Social Pressure*, SCIENTIFIC AMERICAN, Vol. 193 (1955) for seminal social psychological research on how social pressure leads to conformity in expressed opinions.

³² Scheff, *Shame and Conformity: The Deference-Emotion System*, AMERICAN SOCIOLOGICAL REVIEW, Vol. 53 (1988).

³³ *Id.*

³⁴ Moscovici, *Social Influence and Conformity*, in G. Lindzey & E. Aronson, HANDBOOK OF SOCIAL PSYCHOLOGY, 3rd Edition (1985).

³⁵ Moscovici makes an important distinction between “conversion” and “compliance.” In conversion, the juror will change an opinion in order to conform. In compliance, the juror will state that he/she can be fair and impartial in order to comply with the conformity pressure from the judge, but will retain his/her private opinion.

³⁶ Marshall, *Juror, Judge, and Counsel Voir Dire Perceptions and Behavior in Two Illinois State Courts*, DOCTORAL DISSERTATION, BOSTON UNIVERSITY (1983).

³⁷ Broeder, *Voir Dire Examinations: An Empirical Study*, SOUTHERN CALIFORNIA LAW REVIEW, Vol. 38 (1965).

There is no way of knowing if jurors are lying when they tell the court that they can be fair and impartial. However, if the juror has previously reported experiences or attitudes that predispose him/her to bias in the case at trial, the potentially prejudiced party can have little confidence in the juror's statement of fairness, and can only be assured of an impartial jury if a challenge for cause is granted.

F. PERSEVERANCE OF BELIEFS

That biases affect reasoning is well accepted by psychologists.³⁸ Significantly, psychologists have also studied how biases persevere in the face of contradictory evidence. Ditto found that less information is needed to reach a preferred conclusion, because information consistent with that conclusion is examined less critically than is inconsistent information.³⁹

If jurors hold biases about a party, or issues at trial, there is the possibility that they will simply reject testimony or evidence that is contradictory to their biases.⁴⁰ The effect of bias on information processing is potentially so strong that studies have shown that contradictory information (including evidence and testimony) can actually be interpreted to support one's prior attitude.⁴¹

In light of this research, it is not reasonable to expect that all jurors who hold biased attitudes relevant to the case at trial will be able to be fair and impartial simply because they have stated that they can. It is reasonable to expect that, unless those jurors are excluded for cause, some of them will persevere in their biased beliefs, and cognitively process trial testimony in a manner that is prejudicial to one of the parties.

G. JUDICIAL INSTRUCTION TO SET BIASES ASIDE

It is not reasonable to expect jurors to be able to set aside their biases simply because a judge instructs them to do so. Consider a juror who expresses a prejudicial attitude, and then accedes to the judge's instructions by stating that he/she will set the attitude aside and be fair and impartial. Wegner and his associates have found that asking an individual to not think about something causes an active cognitive search to see whether the thought is present.⁴² This has the paradoxical effect of making the thought

³⁸ Kunda, *The Case for Motivated Reasoning*, PSYCHOLOGICAL BULLETIN, Vol. 108 (1990).

³⁹ Ditto, *supra*.

⁴⁰ Ross, et al., *supra*.

⁴¹ Lord, et al., *supra*.

⁴² See, Wegner and Erber, *The Hyperaccessibility of Suppressed Thoughts*, JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, Vol. 63 (1992); and Wegner, Schneider, Carter & White, *Paradoxical Effects of Thought Suppression*, JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, Vol. 53 (1987).

more cognitively accessible. Thus, the juror who is told to not think about a bias will find that bias to be even more accessible in his/her processing of the trial testimony and evidence.

The inability of jurors to set aside or disregard information has been well studied in areas such as pre-trial publicity⁴³, inadmissible evidence⁴⁴, limiting uses of evidence⁴⁵ and severance.⁴⁶ Given all of the psychological factors discussed above, it is not reasonable to expect jurors to be able to set aside biases simply because of judicial instruction to do so.

III. CONCLUSION

From the above it is apparent that peremptory challenges are not the answer to potential juror bias. There are often insufficient peremptory challenges available to remove all potentially biased jurors. Further, in some jury selection systems, such as “replacement” systems, new jurors are randomly selected from the pool to replace jurors peremptorily stricken. When a plaintiff’s final peremptory is exercised, and a replacement juror is seated, a challenge for cause is the only remedy available if the replacement juror is biased.

Yet, that remedy is not available to the prejudiced party if the juror states, despite having reported experiences or attitudes that the psychological research literature would indicate can lead directly to bias, that he/she can put any bias aside, and be fair and impartial.

⁴³ See, Carroll, *supra*. Note that the prejudicial effects of pre-trial publicity endured, despite judicial instructions.

⁴⁴ See, Broeder, *The University of Chicago Jury Project*, NEBRASKA LAW REVIEW, Vol. 88 (1959); Wolf and Montgomery, *Effects of Inadmissible Evidence and Level of Judicial Admonishment to Disregard on the Judgments of Mock Jurors*, JOURNAL OF APPLIED SOCIAL PSYCHOLOGY, Vol. 7 (1977); and Carretta and Moreland, *The Direct and Indirect Effects of Inadmissible Evidence*, JOURNAL OF APPLIED SOCIAL PSYCHOLOGY, Vol. 13 (1983). All of these studies found no remedy to jurors’ use of inadmissible evidence in judicial instructions.

⁴⁵ See, Tanford and Cox, *Decision Processes in Civil Cases: The Impact of Impeachment Evidence on Liability and Credibility Judgments*, SOCIAL BEHAVIOR, Vol. 2 (1987). Tanford and Cox found that jurors used impeachment evidence for liability purposes, despite limiting judicial instructions. See also, Wissler and Saks, *On the Inefficacy of Limiting Instructions: When Jurors use Credibility Evidence to Decide on Guilt*, LAW AND HUMAN BEHAVIOR, Vol. 9 (1985). Wissler and Saks found that evidence of prior convictions affects verdicts despite limiting instructions.

⁴⁶ See Greene and Loftus, *When Crimes are Joined at Trial: Institutionalized Prejudice?*, LAW AND HUMAN BEHAVIOR, Vol. 9 (1985) and Tanford and Penrod, *Biases in Trials Involving Defendants Charged with Multiple Offenses*, JOURNAL OF APPLIED SOCIAL PSYCHOLOGY, Vol. 12 (1982). Despite judicial instructions to consider charges separately, when crimes were joined, convictions increased.

To ensure truly fair and impartial juries, juries with even no appearance of prejudice, challenges for cause must be broadly applied. If judges come to know that jurors' experiences and attitudes can cause biased reasoning, that testimony and evidence will be interpreted to favor a biased perception, that jurors' self-reports of fairness are often not credible, and that judicial instruction does not solve the problem, then shouldn't judges grant challenges for cause as the rule, rather than the exception in cases of apparent bias?

A fair and impartial trial by jury can only be ensured by removing, for cause, prospective jurors who have experiences or attitudes that indicate a significant potential for prejudice in the matter at trial. Accepting such jurors' statements, that they can set aside their biases and be fair, results in a great risk of seating biased jurors and a clear appearance of prejudice to a party.

RESEARCH AND JURY SERVICES

I. INITIAL CASE ASSESSMENT

The Initial Case Assessment is designed to provide our clients with the benefit of our past experience without the cost associated with elaborate jury research. While not a substitute for research utilizing surrogate jurors, it is a fast and effective way to receive an objective assessment of your case. Our time is spent performing the following activities:

- Meeting with the trial team to discuss their key thoughts and concerns.
- Reading case documents.
- Collecting and evaluating venue-specific demographic and lifestyle data drawn from various proprietary databases.
- Comparing this case to our collective experience with jury cases of all types, jury cases in this venue, and jury cases involving the types of issues involved in this case. We have a senior team whose input will be integrated into the final analysis.
- Assessing the strengths and vulnerabilities of this case based on our knowledge of, and experience with, juror decision-making.
- Formulating strategic recommendations based on our analysis of the case.
- Meeting with the trial team to discuss our analysis and to address questions and additional issues in an informal atmosphere.

II. SOLUTION GENERATING RESEARCH

This project is based on a methodology that departs from the traditional focus group approach. Most research projects start with an assumption of what the case story should be and, therefore, are designed to elicit feedback to the story. In Solution Generating Research, the goal is to provide an environment in which jurors teach us about case problems from the jurors' perspective and their view of the most effective solutions. This solutions-oriented feedback then forms the basis of persuasive strategy development.

Methodology

Approximately 20 surrogate jurors are recruited from the venue or a surrogate community. The facilitator works from a "what if sheet" or generic questionnaire prepared in advance with the input of the trial team. General facts of the case may be given throughout the process to get a general reaction.

The procedure begins with a pre-presentation interview of the group to determine any relevant pre-existing attitudes and beliefs. Once the presentation is under way, jurors are encouraged to interact by asking questions or offering opinions about what they are hearing (if videotaped, the tape is stopped at appropriate intervals).

The discussion is free flowing and facilitated by a DecisionQuest professional. Specific issues explored will include jurors' a) opinions and feelings about the litigants, b) attitudes and beliefs about the relevant issues, c) assessment of the strengths and weaknesses of both litigants, and d) motivation to award damages. After the presentation, jurors will be asked to list and rank the order of the key arguments they heard, report points with which they agreed and disagreed, indicate which issues they feel were left out, and project the best arguments and counter-arguments for each party. They are asked to indicate the type of evidence they are most interested in seeing and ways in which it should be presented. Any "unanswered" questions are discussed. If appropriate, the group may be subdivided into smaller discussion groups representing distinct positions on key issues, or jurors may be asked to engage in a facilitated discussion process. All discussions are recorded on videotape.

III. STRATEGY DEVELOPMENT AND TESTING RESEARCH

The goal of Strategy Development and Testing Research is to develop and test key case strategies so that when the case goes to trial, you are confident you are telling the most persuasive story possible. This project also provides valuable information about how jurors are likely to think about key case issues, their commonsense assessment of plaintiff and defense strengths and vulnerabilities, and jurors' perceptions of damages. This exercise is an excellent method for learning about the process by which jurors will orient to this case and make important decisions.

This project has been employed by our clients at all phases of the trial preparation process and even before cases are filed. Clients tell us that this process effectively sharpens discovery efforts, saving time and money, highlights key issues for witness preparation often before deposition, and informs any ongoing settlement process. The process also is frequently used just before trial to ensure necessary strategic changes are made before the case begins.

Methodology Summary

Approximately 24 surrogate jurors are recruited from the venue or a surrogate community and will listen to hard-hitting argumentative summaries of the plaintiff and defense positions (about 30-45 minutes each). We work with you to prepare the case summaries in the correct format for the research and pay special attention to making the opposition's presentation as forceful as possible. Selected documents and exhibits may also be presented, but they must be kept to a reasonable number.

Jurors' responses to each summary will be evaluated in the following ways:

"Moment-to-Moment™" Response: As jurors watch the presentations, they will rate the persuasiveness of the arguments by registering their responses on handheld keypads. The results will be displayed instantaneously on a monitor that you and others can observe. The display indicates precisely where plaintiff and defense arguments succeed and fail, and often reveals the precise moment when jurors switch to one side or the other. The results are recorded on videotape for future analysis. It is an incredibly useful and powerful tool for pinpointing case vulnerabilities for the group as a whole and for sub-groups and individual jurors.

Electronic Questionnaires: Each juror will respond to a series of questions designed to measure their key beliefs and attitudes, their reaction to the case at key points in time, their feelings about verdict and damages, and their analysis of the strengths and weaknesses of the cases. Many of these results can be computed and displayed during the session.

Deliberations: Two deliberation groups will be formed from the total panel. Each group will deliberate behind a one-way mirror or on closed-circuit television. At the close of deliberations, jurors will be interviewed about their decisions and a variety of other issues related to their perception of the case. The deliberations and interviews will be videotaped for subsequent analysis.

IV. WITNESS PREPARATION

We can assist you in preparing important witnesses in one-on-one sessions that can last from an hour to several days or more depending on the needs of the witness. Our witness preparation sessions allow the witness to receive performance feedback in a non-threatening context and to have the opportunity to learn and practice strategies and tactics for improvement. Since the critique is provided by a communications expert who is outside the team, who has experience with juries, and who focuses on the communication skills of the witness, as well as the themes and content of the testimony, this feedback is often accepted more fully than when the critique is offered by a member of the trial team. Our experience is that having a consultant provide this feedback also preserves the integrity of the relationship between trial counsel and the witness, and strengthens the

witness/lawyer team, rather than weakening this relationship if the attorney must provide highly critical feedback.

Witnesses can be prepared individually or in small groups. In some cases, because of the status of the individual or their sensitivity to training, individual sessions are recommended. Both individual and group sessions include education and practice/feedback components.

V. COMMUNITY ATTITUDE SURVEY

The purpose of Community Attitude Survey Research is to determine how the litigants are perceived in the venue. Many times the trial team is surprised to learn that prospective juror perceptions do not coincide with conventional wisdom and any media coverage. It is important to learn the extent to which jurors recognize key litigants, their image in the community, and what, if any, attitudes and opinions prospective jurors have of case-related issues. It is helpful to know where jurors get their information about the litigants and the impact of any media coverage on their perceptions.

The questionnaire used in this project would be designed by DecisionQuest social scientists who are expert in survey design. The respondents will be selected according to a scientific random sampling technique that will ensure reliable results. We would design, implement, and analyze the study and its results. You would have an opportunity to review the questionnaire in advance.

We would analyze the results to determine what, if any, significant perceptions exist and to determine any association with key demographic factors. The raw data and statistical analysis of all factors would be summarized in a written report.

VI. JURY SELECTION RESEARCH AND CONSULTING

Formulating Voir Dire Questions

A team of DecisionQuest consultants develops key questions for voir dire. Proposed questions are provided to the trial team in advance for review and modification, if necessary.

Constructing/Analyzing a Juror Questionnaire

When the court permits the use of a written juror questionnaire, a team of DecisionQuest consultants develops a written questionnaire to be administered to all prospective jurors before jury selection.

In-court Assistance With Jury Selection

We are available to assist with the jury selection process. We can be present in the courtroom to help you implement the findings of our juror profiling research so that your voir dire and challenges are conducted in an effective manner to maximize the probability of striking these jurors most likely to find against you.

VII. STRATEGIC DEMONSTRATIVE EXHIBIT DESIGN AND PRODUCTION

Having extensively studied judges, juries, and other decision-makers, we are aware of the preference for visual presentations in the courtroom and other situations. Actual juror interviews confirm that a critical element in developing the most persuasive case presentation is the visual material that will support your case themes, strategies, facts, and expert testimony. The professional staff at DecisionQuest is trained in the psychology of visual perception. We can assist you in developing a visual strategy for communicating persuasively to judges, jurors, arbitrators, mediation panels, regulatory groups, or any other trier of fact. We have designed graphics for trials and other proceedings in urban and rural venues all over the country.

A key element of this strategy is the recommendation of the most effective presentation medium and technology to be used in your particular case. The advice we give is based upon what we know about how jurors understand and process visual information, what we learn from case-specific jury research, the latest information on the design of meaningful and persuasive visual information, the needs of your expert witnesses, and the demands and constraints of the physical location of your courtroom or hearing facility.

DecisionQuest utilizes the most advanced technology and equipment available anywhere today. Similarly, all elements of design and production are completed in DecisionQuest facilities to ensure both confidentiality and value to our clients. We have invested heavily in the latest technologies that will allow us to deliver the best quality at the lowest cost to our clients.

DecisionQuest Graphic Consultants have a wealth of visual solutions for the presentation of your case. These include:

Static Exhibits: Large format boards, transparencies or 8½ x 11 jury books.

Magnetic Exhibits: The use of magnetics can allow a static exhibit to be both focused and animated.

Video Production: Any video presentation can be shot and edited in our state-of-the-art digital editing facility. Virtually any video format can be accommodated.

Computer Animation: Whether your case calls for 2-D or 3-D animation, we have the ability to make the proper recommendation, develop a cost-effective solution, and produce a high quality animation for your case.

Presentation Systems: Based upon your case needs, we can provide either a CD-ROM-based computer presentation system or a laser disc-based presentation for your case. CD-ROM-based computer presentations may include scanned documents, photographs, graphics, or video elements. These can be manipulated, highlighted, colored, and interactively presented to the jury.

DecisionQuest Graphic Consultants are prepared to assist you with the development of your visual strategy, from the creation and production of your visuals, the design, implementation, layout of the facility, to ongoing support during trial if needed.

VIII. POST-TRIAL JURY INTERVIEWS

Post-trial interviews provide valuable information and insight about the factors that influenced the jury's decisions.

The interviews can be conducted by telephone or in person. Either method produces valid information, although telephone interviews often are significantly less costly, with no significant reduction in information quality.

The interview process involves: a) understanding the case and your specific interview objectives, b) developing an interview protocol which you will have the opportunity to review, c) conducting the interviews with jurors who are willing to participate, d) analyzing the interviews, e) writing the report, and f) attending any follow-up meetings requested by you.